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July 12, 2011

The Honorable Thomas DiGirolamo
United States Magistrate Judge
200A United States Courthouse
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Re: *United States v. Aaron Lawless*
Crim. No. 11-0173M

Dear Judge DiGirolamo:

A defense Motion to Dismiss was filed in the above-captioned case on May 31, 2011. Subsequently, on June 13, 2011, the government filed an opposition to that motion. Counsel is writing to the Court to supplement the Motion to Dismiss with a recent Supreme Court case, *Brown v. Entertainment Merchants Association, et al.,* __ S.Ct. __, 2011 WL 2518809 (U.S.), which was decided on June 27, 2011.

In *Brown,* Justice Scalia, writing for the majority, reiterated that there are limited areas of lawfully prohibited speech, such as obscenity, incitement, and fighting words, which are " well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Brown* at 3 (internal quotations omitted). Other than those narrow classes of speech, " new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated." *Id.*

In its opposition, the government relies, in part, on the decision in *United States v. Robbins,* 2011 WL 7384 (W.D. Va.), which departs from two other federal decisions, which struck down the Stolen Valor Act on First Amendment grounds. *See United States v. Alvarez,* 6717 F.3d 1198 (9th Cir. 2010) and *United States v. Strandlof,* 746 F.Supp.2d 1183 (D. Colo. 2010). The recent Supreme Court opinion in *Brown,* which sets forth the categories of speech which may be lawfully abridged, and condemns any legislative intent to expand those categories, underscores why the *Robbins* opinion was wrongly decided.

Thank your for your consideration of this additional authority in support of the defense Motion to Dismiss.

Respectfully,

/s/

SUSAN M. BAUER
Assistant Federal Public Defender

SMB:sdf
cc: AUSA Hollis Weisman